

REMARKS

Claims 1-13 were presented for examination in the present application. The instant amendment adds new claim 14. Thus, claims 1-14 are presented for consideration upon entry of the instant amendment. Claims 1, 2, 9, and 12 are independent.

Specification objection

The Office Action objected to the Abstract for exceeding 150 words and including legal phraseology.

The Abstract has been amended to obviate the objection thereto, as well as to remove all reference numerals. Accordingly, reconsideration and withdrawal of the objection to the specification are respectfully requested.

Claim objections

Claims 1-7 and 9-11 were objected to due to various informalities.

Claims 1, 5-7, and 9 have been amended to obviate these objections. Claims 1 and 9 have been amended to change "and/or" to "or". Claim 5 has been amended to correct the obvious error noted by the Examiner, namely to add "the" before the recitation of the "overflow reservoir". Claims 6 and 7 have been amended to correct the grammatical errors noted by the Examiner.

In addition, claim 12 has been amended to correct informalities noted by the Applicant.

It is submitted that these amendments merely makes explicit what had been implicit in the claims. Accordingly, reconsideration and withdrawal of the objections to the claims are respectfully requested.

Rejection under §112

Claim 8 was rejected under 35 U.S.C. §112, second paragraph.

Claim 8 has been amended to depend from claim 7 and has been broadened to remove the "in particular" limitation. Applicant submits that these amendments obviate the rejection to claim 8. Accordingly, reconsideration and withdrawal of the rejection to claim 8 are respectfully requested.

Rejection under §102

Claims 1-13 were rejected under 35 U.S.C. §102(b) over Applicant's own International Publication No. WO 02/093232 to Hummel (the '232 International Publication).

Independent claim 1 has been clarified to recite that the protection means comprises "**a plurality of capillary channels** connected with the suction means for discharging the immersion medium (emphasis added)".

The Office Action used a machine translation of the '232 International Publication to reject claim 1. In the interest of clarity, Applicant shall refer to the text from the English language equivalent to the '232 International Publication, namely U.S. Patent No. 7,304,793 to Hummel (the '793 Patent), which is a National Stage entry of the '232 International Publication.

Applicant respectfully submit that the machine translation of the '232 International Publication has resulted in the Office Action has misunderstanding the reference. Specifically, Applicant submits that the '232 International Publication, as properly translated by the '793 Patent, fails to disclose or suggest a protection means that comprises a "capillary channel" as recited by claim 1.

For ease of analysis, Figure 2 of the '232 International Publication is reproduced below.

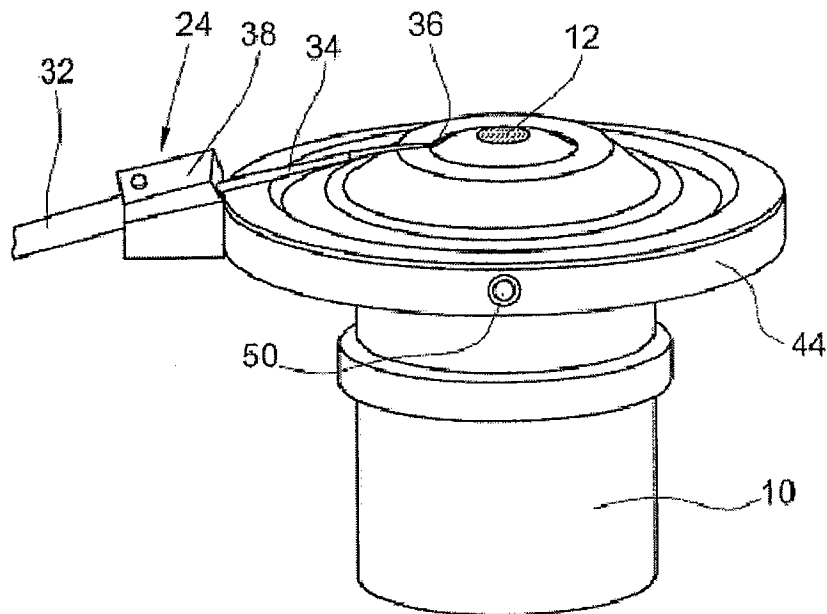


Fig.2

Regarding Figure 2, the '793 Patent discloses that clamping means 38 is held by means of a bolt 42 to a collar-shaped take-up means 44 surrounding the objective 10. Take-up means 44 serves for taking up immersion medium 46 provided between exit lens 12 and sample support 14 if excess immersion medium is supplied via-supply device 24 to gap 22 or if the supplying is performed continuously. The collar-shaped take-up means 44 comprises a discharge opening 50 connected to a hose 48. Further, the hose 48 can have a device 100 for suctional removal connected thereto. See col. 5, lines 47-57.

Rather, the present application recognized that the device of Applicant's own '232 International Publication leads to certain drawbacks and difficulties. Specifically, the present application discloses, with respect to the '232 International Publication, that

excess immersion medium normally forms individual drops in the collection means, where the drops are difficult to draw off the collection means by suction via a single suction opening. Over time, the drops become increasingly larger such that there is the risk of a drop becoming that large that the immersion medium flows over the edge of the collection means. See page 2, lines 9-20 of the present application.

Thus, Applicants submit that the '232 International Publication, as translated by the '793 Patent, fails to disclose or suggest a "capillary channel" as claimed. Rather, the '232 International Publication, as translated by the '793 Patent, merely discloses an open topped, collar-shaped take-up 44, which collects excess fluid that flows down its external surface and then drains this collected fluid via opening 50. The collar-shaped take-up 44 of the '232 International Publication cannot reasonably be considered to define a capillary channel.

Notwithstanding the above and presuming *arguendo* that the '232 International Publication discloses a capillary channel, which Applicant maintains it does not, Applicant submits that the '232 International Publication clearly fails to disclose or suggest a **plurality of capillary channels** as recited by present claim 1.

Accordingly, claim 1, as well as claims 3-8 that depend therefrom, are in condition for allowance. Reconsideration and withdrawal of the rejection to claims 1 and 3-8 are respectfully requested.

Claim 2 has been amended into independent form, namely to include the elements of claim 1. Claim 2 recites, in part, that "the protection means comprises a **capillary channel** (emphasis added)".

As discussed in detail above, Applicant maintains that the collar-shaped take-up 44 of the '232 International Publication, as properly understood from the translation of

the '793 Patent, cannot reasonably be considered to define a capillary channel as recited by claim 2.

Moreover, claim 2 recites that the capillary channel is "configured as an **annular gap** around the exit lens (emphasis added)".

Applicant further submits that the collar-shaped take-up 44 of the '232 International Publication, as properly understood from the translation of the '793 Patent, cannot reasonably be considered to be configured as an annular gap as recited by claim 2. Rather, Applicant maintains that the '232 International Publication merely discloses an open topped, collar-shaped take-up 44, which collects excess fluid that flows down its external surface and then drains this collected fluid via opening 50.

Accordingly, claim 2 is in condition for allowance. Reconsideration and withdrawal of the rejection to claim 2 are respectfully requested.

Independent claim 9 recites, in part, that "via **a capillary channel defined in the protection means surrounding the objective** as an annular gap around the exit lens **the immersion medium is discharged automatically, at least with the aid of capillary forces** (emphasis added)".

Again, Applicant submits that the '232 International Publication merely discloses an open topped, collar-shaped take-up 44, which collects excess fluid that flows down its external surface and then drains this collected fluid via opening 50. Thus, the '232 International Publication fails to disclose or suggest immersion medium being discharged automatically via a capillary channel with at least the aid of capillary forces as claimed.

Moreover, claim 9 has been clarified to recite that the capillary channel is defined as "**an annular gap around the exit lens** (emphasis added)."

Notwithstanding the above and presuming arguendo that the '232 International Publication discloses a capillary channel, which Applicant maintains it does not, Applicant submits that the '232 International Publication clearly fails to disclose or suggest a capillary channel as an annular gap around the exit lens as recited by present claim 9.

Accordingly, claim 9, as well as claims 10 and 11 that depend therefrom, are in condition for allowance. Reconsideration and withdrawal of the rejection to claims 9-11 are respectfully requested.

Independent claim 12 recites, in part, "an outer collar portion arranged around the inner collar portion, wherein the **inner collar portion** and the outer collar portion are at least partly spaced relative to each other such that **an essentially annular capillary channel is defined** (emphasis added)".

Applicant submits that the '232 International Publication fails to disclose or suggest an inner collar portion and, thus, clearly fails to disclose or suggest the capillary channel defined between this missing element and the collar-shaped take-up 44.

Again, Applicant maintains that the '232 International Publication, as translated by the '793 Patent, merely discloses an open topped, collar-shaped take-up 44, which collects excess fluid that flows down its external surface and then drains this collected fluid via opening 50. Thus, the '232 International Publication fails to disclose or suggest that any part of the collar-shaped take-up 44 can be read on the claimed "inner collar portion" and, thus, no part of the '232 International Publication discloses or suggests a "capillary channel" as claimed.

Accordingly, claim 12, as well as claims 13 and 14 that depend therefrom, are in condition for allowance. Reconsideration and withdrawal of the rejection to claims 12 and 13 are respectfully requested.

New claim

Claim 14 has been added to point out various aspects of the present application. Support for new claim 14 can be found in the specification at least at page 3, line 30 through page 4, line 5. No new matter is added.

Applicant specifically points out that new claim 14 is not intended to be limited to the specific mechanisms of patentability previously argued with respect to any prior claims in this or any related applications. Accordingly, Applicant hereby rescinds any disclaimer of claim scope and, thus, any prior art for which such a disclaimer was made to avoid may need to be revisited by the Examiner with respect to new claim 14.

Claim 14 is believed to be in condition for allowance. For example, claim 14 recites, in part, that "the inner collar portion and the outer collar portion are at least partly spaced relative to each other such that **a plurality of capillary channels are defined** (emphasis added)".

Applicant respectfully submits that the '232 Hummel publication fails to disclose or suggest one capillary channel, much less the plurality of capillary channels recited by claim 14.

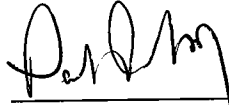
Summary

In view of the above, it is respectfully submitted that the present application is in condition for allowance. Such action is solicited.

If for any reason the Examiner feels that consultation with Applicant's attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call the telephone number below.

Respectfully submitted,

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Paul D. Greeley

Reg. No. 31,019

Attorney for Applicant(s)

Ohlandt, Greeley, Ruggiero & Perle, L.L.P.

One Landmark Square, 10th floor

Stamford, CT 06901-2682

Tel: (203) 327-4500

Fax: (203) 327-6401